TO: L CMD
Department of Energy INFO: AT

Washington, DC 20585


JUL 30 1997

FAB

Rec'd CFO/SPO

AUG 26 1997

MEMORANDUM FOR: PROCUREMENT DIRECTORS

FROM: RICHARD H. HOPF 
DEPUTY ASSISTANT SECRETARY FOR
PROCUREMENT AND ASSISTANCE MANAGEMENT

SUBJECT: WORK FOR OTHERS -- TEAMING WITH INDUSTRY

The Work for Others (WFO) program is important to the vitality of the Department of Energy's (DOE) National Laboratories and its other major Government-Owned Contractor-Operated facility contractors. If we are to preserve the option of performing WFO at these facilities, we must ensure that we comply with statutory and regulatory guidance and common sense business practices. Foremost among these is the need to avoid situations where DOE's Federally Funded Research and Development Centers (FFRDCs) are placed in direct competition with the private sector. Therefore, such contractors may not participate as offerors, team members, or subcontractors in response to competitive acquisitions.

The Federal Acquisition Regulation (FAR) addresses competition and FFRDCs at 17.504 (e) and 35.017 (a) (2). FAR 17.504 (e) provides that "The nonsponsoring agency shall provide to the sponsoring agency necessary documentation that the requested work would not place FFRDC in direct competition with the domestic private industry." FAR 35.017 (a) (2) provides that "It is not the Government's intent that an FFRDC use its privileged information or access to facilities to compete with the private sector. However, an FFRDC may perform work for other than the sponsoring agency under the Economy Act, or other applicable legislation, when the work is not otherwise available from the private sector." Clearly FFRDCs are prohibited from competing with the private sector.

A recent General Accounting Office (GAO) decision, Logicon RDA, B-276240; B-276240.2; B-276240.3, May 23, 1997 (1997 U.S. Comp. Gen. LEXIS 214) copy attached, correctly held that it is inappropriate for DOE FFRDCs to team as a subcontractor with a non-Federal entity responding to a competitive acquisition. GAO held that the FAR prohibition on FFRDC competition with the private sector applies equally be it at the prime contractor or subcontractor level.



DOE has developed procedures to ensure that the performance of work for non-DOE entities is conducted within well defined and specific program requirements that ensure compliance with all applicable laws, statutes, and regulations, including the FAR. These procedures are contained in DOE Order 481.1, Work for Others (Non-Department of Energy Funded Work). Section 4 of the Order states, "when entering into WFO agreements, DOE or its contractors will not be placed in direct competition with the private sector." It requires that "a DOE determination be made and certified in writing by a DOE Contracting Officer that, the proposed work will not place the facility in direct competition with the domestic private sector."

As stated earlier, it has been determined to be in the best interest of the program and to ensure compliance with acquisition regulations that DOE prohibit its FFRDCs from participating as offerors, team members, or subcontractors in response to competitive acquisitions.

If you have any questions regarding this memo or its application in specific cases, I encourage you to contact Scott Geary, of this office, at (202) 586-3299.

Attachment